

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 795 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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PADHIYAR JESINGBHAI HIRABHAI

Versus

SHAIKH I.N.C. SINCE DECEASED THROUUGH HEIRS

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Appearance:

MR PB MAJMUDAR for Petitioner

MR JV JAPEE for Respondent No. 1

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 20/06/97

ORAL JUDGEMENT

1. Mr.P.B.Majmudar appears for petitioner and Mr.M.C.Shah appears for respondents. This CRA is filed by the defendant-tenant challenging the concurrent decree of possession passed by two courts below on the ground that the respondent-plaintiff has proved that the suit premises were required by him reasonably and bonafide for

his personal occupation and use and that the defendant has failed to prove that more hardship will be caused to him by passing decree for eviction than to plaintiff.

2. It appears that the respondent-plaintiff--Shaikh Ibrahimhai Nurbhai instituted Reg.C.S.No.135/87 in the court of 3rd Jt.Civil Judge (SD), Himmatnagar against the defendant-petitioner to recover the possession of the suit premises which is situated at Himmatnagar Highway near Railway crossing bearing Nagar Panchayat No.4/220/2. The possession was also claimed on the ground that the petitioner-defendant was a tenant in arrears of rent for a period of six months or more and that he had neglected to pay the rent within the period of one month next after the service of notice under section 12(2) of Bombay Rents, Hotel & Lodging House Rates Control Act, 1947(hereinafter referred to as the "said Act"). The suit of the plaintiff was resisted by the defendant by his written statement at Exh.9, interalia, contending that he was not in arrears of rent and that he was always ready and willing to pay the rent and he was not negligent to make payment of the rent. He contended that the suit premises were not reasonably and bonafide required by the plaintiff as the plaintiff has already got his own shop for the purpose of carrying on his business and that his sons can also sit in the said shop and look after the business and that therefore no decree for possession was required to be passed under section 13(1)(g) of the said Act.

3. On the aforesaid pleadings the trial court framed issues and on issue as regards arrears of rent it recorded the finding against the plaintiff-landlord, and on the issue of reasonable and bonafide requirement of the suit premises for his personal use and occupation by the landlord, the trial court recorded the finding in the affirmative and on the question as to whether greater hardship will be caused to the defendant if the decree of possession is passed than to the plaintiff defendant, the trial court held that the defendant has failed to prove that greater hardship will be caused to him. On such findings, the trial court by its judgment and decree dated 31.12.1990 decreed the suit of the plaintiff calling upon the defendant to handover the possession of shops to the plaintiff and to pay arrears of rent of Rs.1670/- upto 31.12.1985 and to pay the mesne profits at the rate of Rs.100/-p.m. with effect from 1.1.1986.

4. Being aggrieved and dissatisfied thereby the petitioner-defendant preferred Civil Appeal No.1/91 in the court of Extra Assistant Judge, Sabarkantha at

Himmatnagar and the extra assistant judge by judgment and decree dated 22nd July, 1991 dismissed the appeal and confirmed the decree of possession passed by the trial court. The cross objections which were filed by the plaintiff contending that the trial court having failed to pass the decree even on the ground of nonpayment of rent were allowed and it was held that the defendant was in arrears of rent for a period of more than six months and was liable to be vacated and the plaintiff was entitled to get possession of the suit property.

5. Two courts below have thus concurrently found by appreciating the evidence on record decree that of possession was required to be passed against the opponent mainly on the ground that the premises were required bonafide and reasonably by the landlord for his personal use and occupation and that greater hardship will be caused to the landlord if the decree for possession is not passed.

6. Mr. P.B.Majmudar, 1 d. c ounsel appearing for the defendant-tenant strenuously urged before this court that the decree passed by two courts below under section 13(1)(g) of the said Act on the ground of reasonable and bonafide requirement of the suit premises by the landlord was bad in law and not maintainable. In his submission both the courts below have erred in appreciating the evidence on record and he further submitted that simply because the landlord has got major sons who are also to be provided accommodation for the purpose of starting business the tenant can not be directed to vacate suit premises. He has however not disputed that the tenancy was a tenancy for business purpose and that what was let was the premises consisting of three shops. It was not a tenancy for residential purpose. It was for the purpose of business that the landlord wanted the premises so as to accommodate his sons who were grown up by starting busienss for them in the suit premises. He however strenuously urged that the decree for possession under section 13(1)(g) of the said Act can not be passed when the premises are for business.

7. On the other hand, Mr.M.C.Shah appearing for respondent-plaintiff has very strenuously urged that section 13(1)(g) of the Rent Act simply refers to personal and bonafide requirements of the landlord and if the premises are shops or business premises the landlord is entitled to evict the tenant if the premises are reasonably and bonafide required by him for the purpose of starting business in the premises so as to provide business premsies to his sons. Admittedly, the landlord

was using the suit premises as business premises. Therefore, in his submission decree for possession could be lawfully passed under section 13(1)(g) of the said Act and no interference of this court was called for.

8. The lower appellate court after appreciating the evidence has found that two sons of the plaintiff were major and were in need of accommodation where business could be started. On the date of the suit the plaintiff bonafide required the suit premises for his personal use and occupation so as to enable his sons to use the premises for business. It is also proved that two sons of the plaintiff were major and were not prosecuting their studies further. The plaintiff was therefore desirous of settling his sons in one or the other business. The premises were therefore naturally required by the plaintiff for the business of his sons were also examined at Exhs 45 and 47. On the question of hardship it is found that the defendant-tenant has not established his possession of property bearing No.4/2034/3 situated near Mehta Petrol Pump. In the document-Exh.43 name of the person owning and possessing the shop is shown to be Jaisingbhai Hirabhai Padhiyar and therefore it was argued that the name of the defendant was Jaswantbhai Hirabhai Padhiyar and not Jaisingbhai Hirabhai Padhiyar. The lower appellate court on its appreciating evidence has found that in fact the defendant has purchased the suit premises for a consideration of Rs.21000/- near Mehta Petrol Pump and that he was carrying on his business there. The query put up by the defendant that the suit shop was required by his three brothers was not supported by any evidence and the same is rightly not believed by the lower appellate court. The defendant has also failed to produce the sale deed of the shop. He has not denied that the suit shop was not belonging to him or that someone was the owner of the suit shop. On the contrary in the cross-examination he has admitted that he was the owner of one shop situated near Mehta Petrol Pump. Having considered the entire evidence the lower appellate court has found that the trial court has rightly decreed the suit of the plaintiff on the ground that the plaintiff requires the shop bonafide and reasonably for his personal use and occupation and therefore no interference on appeal was needed. I have also gone through the evidence on record and Mr.Majmudar was not in a position to assail the findings based on said evidence and I also uphold the finding recorded in the trial court. In that view of the matter the decree for possession passed by the two courts below is required to be confirmed and this CRA is required to be dismissed.

9. The lower appellate court has passed the decree even on the ground that the defendant was the tenant in arrears of rent for a period of more than six months and he neglected and failed to pay the rent despite service of notice under section 12(2) of the said Act within a period of 30 days and that he has not raised any dispute of standard rent and not replied to said notice within 30 days after receipt of said notice. The lower appellate court has found that even otherwise he is required to be evicted under section 12(e) of the said Act and I also concur with such finding and hold that the suit was also required to be decreed on the ground that the tenant was not ready and willing to pay arrears of rent for a period of more than six months after service of notice under section 12(2) of the said Act.

10. In view of the aforesaid there is no ground made out by Mr.Majmudar calling for interference of this court and the decree of eviction passed against defendant-tenant is hereby confirmed.

11. Mr.Majmudar has however prayed that the petitioner would like to approach to higher forum against eviction decree passed by this court in this CRA and sometime may be granted to the petitioner to approach higher forum. The request being reasonable the execution and operation of the decree of possession is stayed upto 8.8.1997. Rule is accordingly made absolute. No costs.

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